

APPEAL NO. 021182  
FILED JULY 5, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 22, 2002. The hearing officer determined that the compensable injury of appellant (claimant) did not extend to and include an injury to the lumbar spine, ethmoid sinusitis, cervical root lesions, neuroforaminal narrowing of C5-6 and C6-7, headaches, and/or blurred vision. The hearing officer also determined that claimant did not have disability after February 23, 2001. Claimant appealed these determinations on sufficiency grounds and contends that the hearing officer erred in failing to require respondent self-insured (carrier herein) to prove sole cause. Carrier responded that the Appeals Panel should affirm the hearing officer's decision and order.<sup>1</sup>

DECISION

We affirm.

We have reviewed the complained-of determinations regarding extent of injury and disability and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Claimant contended that the hearing officer erred in determining that he did not have disability after February 23, 2002. However, in the discussion portion of the decision and order, the hearing officer indicated that she did not believe claimant had disability due to the compensable injury after February 23, 2002. The hearing officer indicated that, even if claimant had been released with restrictions, the restrictions were not related to the compensable injury, but were for unrelated back problems. We have affirmed the determination that the injury did not extend to the lumbar spine and we perceive no error. Claimant contended that the hearing officer erred in failing to place the burden of proof on carrier regarding sole cause. However, claimant failed to prove that he had disability at all after February 23, 2001, so the burden did not shift to carrier. We perceive no error.

The claimant attached to his appeal a medical report relating to a February 28, 2002, MRI. The report was not an exhibit at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 92255, decided July 27, 1992. To determine whether evidence offered for the first time on appeal requires that the case be remanded for further consideration, we consider whether it came to appellant's knowledge after the hearing, whether it is cumulative,

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<sup>1</sup> Carrier's response was timely filed.

whether it was through lack of diligence that it was not offered at the hearing, and whether it is so material that it would probably produce a different result. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). The report notes that the 2002 and prior 1999 lumbar MRI reports were compared and that the latter MRI shows a worsening of the claimant's condition. This report was dated April 16, 2002, which was before the April 22, 2002, hearing. Claimant asserts that he did not receive it until May 8, 2002. This report concerned a February 2002 MRI, which was itself admitted at the hearing. Claimant did not explain why such a report interpreting and comparing the MRI evidence could not have been obtained at an earlier date. Therefore, we cannot conclude that the claimant proved the required diligence and we decline to consider the evidence attached to the claimant's appeal with regard to extent of injury. Texas Workers' Compensation Commission Appeal No. 980299, decided April 2, 1998.

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
300 W. 15TH STREET  
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR  
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**RON JOSSELET, EXECUTIVE DIRECTOR  
STATE OFFICE OF RISK MANAGEMENT  
P.O. BOX 13777  
AUSTIN, TEXAS 78711-3777.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge